

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 85009 of 2016

(Arising out of Order-in-Original No. 60/STC-I/SKS/15-16 dated 30.09.2015
passed by Commissioner of Service Tax-I, Mumbai)

M/s. Tata Sons Ltd.

Bombay House,
24, Homi Mody Street,
Mumbai 400 001.

Appellant

Vs.

Commissioner of Service Tax-I, Mumbai

5th Floor, New Central Excise Building,
M.K. Road, Churchgate, Mumbai 400 020.

Respondent

AND

Service Tax Appeal No. 85206 of 2016

(Arising out of Order-in-Original No. 60/STC-I/SKS/15-16 dated 30.09.2015
passed by Commissioner of Service Tax-I, Mumbai)

Commissioner of Service Tax-I, Mumbai

5th Floor, New Central Excise Building,
M.K. Road, Churchgate, Mumbai 400 020.

Appellant

Vs.

M/s. Tata Sons Ltd.

Bombay House,
24, Homi Mody Street,
Mumbai 400 001.

Respondent

Appearance:

Shri Vikram Nankani, Sr. Advocate, with Shri Rohit Jain, Shri Nawaz Pal, Advocates and Shri Jignesh Ghelani, C.A., for the Assessee
Shri Shambhoo Nath, Principal Commissioner, Authorised Representative for the Revenue

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 20.07.2022
Date of Decision: 01.11.2022

FINAL ORDER NO. A/86042-86043/2022

PER: SANJIV SRIVASTAVA

These appeals, one filed by the assessee (Appellant) and one filed by the revenue (respondent) are directed against order-in-original No 60 /STC-I/SKS/15-16 dated 30.09.2015 of

Commissioner of Service Tax, Mumbai – I. By the impugned order, following has been held:

"ORDER

In view of the above, I pass the following order:

The Show Cause cum demand Notice No. 1208/COMMR./2014-15 dated 15.4.2014 issued to M/s. Tata Sons Ltd., situated at Bombay House, 24, Homi Mody Street, Mumbai-400001 demanding Cenvat credit of Service tax of Rs. 66,96,62,836/- (actual amount of Rs. 67,00,80,012/-) which is answerable to the Commissioner Service Tax-1, Mumbai is decided as under :

5.1 The demand for inadmissible Cenvat Credit availed and utilized by the notice as above is confirmed to the extent of Rs. 36,42,20,169/- Rs. 34,37,05,962/-(Para 4.10.1) + Rs. 2,05,14,207/-(Para 4.7.6.)] and I order the recovery of the said amount under the provisions of Rule 14 of CCR, 2004 read with the proviso to Section 73(1) of the Finance Act, 1994 against M/s. Tata Sons Ltd. The balance amount of demand is ordered to be dropped as discussed in para 4.3, 4.6 and 4.10 supra.

5.2 I hereby order the payment of interest at the appropriate rate under Rule 14 of the CCR, 2004 read with Section 75 of the Finance Act, 1994 on the above service tax amount of Rs. 36,42,20,169/- confirmed against M/s. Tata Sons Ltd as above.

5.3 I impose penalty equal to 100% of CENVAT credit wrongly availed and utilized which comes to Rs. 36,42,20,169/- Penalty would be payable under Rule 15(4) of CCR period from 1.10.2008 to 27.02.2010 and under Rule 15(3) of CCR for the period from 1.3.2010 to 31.3.2013.

6. This order is issued without prejudice to any other action that may be initiated against the noticee under the provisions of the Finance Act, 1994 or rules framed there under or any other law for the time being in force in India."

2.1 Appellant is registered service provider providing taxable services under the category of Intellectual Property Services

[Section 65 (105) (zm)] and Banking and Financial Services [Section 65 (105) (zzr)] of the Finance Act, 1994.

2.2 During course of audit it was observed that appellant was registered as Core Investment Company (CIC) with Reserve Bank of India (RBI) and is the promoter and principal investment holding company for the Tata group of companies ('Tata Companies'). The Appellant earns dividends, interest, and capital gains from its business of investment holdings in the Tata Companies. They are owner of the 'TATA' brand and has registered the 'TATA' trademark in India and globally. Their other source of income is from 'Brand Promotion' by permitting their group companies to use the brands held by them. They do not undertake any other activity except allowing its various subsidiaries to use their brand. Director's Reports in the financial statements for the year 2008-09 to 2012-13 highlights the business activities of the appellant stating as follows:

"Performance of the Company is based on the shares and securities acquired of its industrial enterprises, dividend and interest earned from group companies, sale of investment, investments made in the unlisted subsidiaries promoted by the company etc. performed as "CORE INVESTMENT COMPANY" registered with RBI classifying them to be Non-Banking Non-Financial Company."

2.3 From the scrutiny of the financial records of the appellant revenue was of the view that major portion of the business income of the appellant was by way of interest, dividend and sale of assets, which were not specified under the category of taxable services as per Section 65 (105) prior to 01.07.2012 and 65 B (44) after 01.07.2012, they were availing the CENVAT credit in respect of input services used for generating these income, and which were not the input services for providing the "Intellectual Property Services" the output services provided by them.

2.4 Thus it was observed that appellant had availed CENVAT credit of Rs 66.96 crores in respect of various input services which cannot be termed to have been used for providing the

taxable services. Accordingly a Show Cause cum Demand Notice dated 16.12.2014 was issued to the appellant asking them to show cause as to why:

"a. The CENVAT credit amounting to Rs 66,96,62,836/- as detailed in Annexure to the show cause notice should not be demanded and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994.

b. Interest at the appropriate rate under Rule 14 of Cenvat Credit Rules, 2004 read Section 75 of the Finance Act, 1994 should not be recovered from them.

c. Penalty should not be imposed on them under the provisions of Rule 15 (3) or 15 (4) of Cenvat Credit Rules, 2004 as applicable during the relevant period read with Section 78 of the Finance Act, 1994"

2.5 The show cause notice was adjudicated as per the impugned order referred in para 1 above.

2.6 Aggrieved by the order, both Appellant and Respondent have filed appeal before the tribunal.

3.1 We have heard Shri Vikram Nankani, Sr. Advocate, with Shri Rohit Jain, Shri Nawz Pal, Advocates and Shri Jignesh Ghelani, C.A. for the appellant and Shri Shamboo Nath, Principal Commissioner, Authorized Representative for the revenue

3.2 Arguing for the appellant learned counsel submits:

In this regard, pursuant to the hearing on 20.07.2022, the Appellant makes the following submissions, which are without prejudice to each other, and the submissions made in the appeal.

- The Appellant is a CIC and the same is an admitted fact as evident from para. (2 of the SCN and para. 4.2 of the OIO). The expression CIC, is defined by the RBI in exercise of powers conferred under the Reserve Bank of India Act, 1934.

- The Core Investment Companies (Reserve Bank) Directions, 2011 issued by RBI defines CIC as a non-banking financial company carrying on the business of acquisition of shares and securities and satisfying the conditions laid down in the said directions. One of the conditions of CIC is also that it does not trade in its investments except through block sale for the purpose of dilution or disinvestment.
- For the period prior to the introduction of 2011 Directions, exemption was granted to the Appellant by RBI from registration as a financial institution vide letter dated 26.10.2006. One of the conditions of the said exemption was also that the Company will not trade in securities except for block sale of group companies as part of the investments.
- Reliance can also be placed on the following decisions holding that Rule 6 of the CCR will not be applicable in respect of investment since it cannot be considered as trading in securities
 - Shriram Life Insurance Company Limited [2019 (2) TMI 688 - CESTAT HYDERABAD]
 - Ace Creative Learning Pvt. Ltd. [2021 (4) TMI 687 - CESTAT BANGALORE]
 - Space Matrix Design Consultants Pvt. Ltd. [2019 (4) TMI 1599 - CESTAT BANGALORE]
- The SCN itself states in para. 10 that the income earned from sale of shares is neither 'taxable services' as defined under Section 65(105) of the Finance Act prior to 1.07.2012, nor a 'service' as defined under Section 65B(44) of the Finance Act w.e.f. 1.07.2012. Therefore, when trading in securities is neither a service nor an exempted service during the disputed period, the question of reversal of credit under Rule 6 on account of exempt service does not arise especially during the period prior to 01.04.2011.
- The definition of 'exempted service' under Rule 2(e) of CCR was amended w.e.f. 01.04.2011 to insert the Explanation

clarifying that 'exempted services' include trading. The substantive change in law introduced vide the said amendment cannot be given retrospective effect and hence, reversal of Cenvat Credit on account of trading is not warranted for the period prior to 01.04.2011. Reliance is placed on the following decisions holding that reversal on account of trading is not required to be made for the period prior to 01.04.2011:

- Trent Hypermarket Ltd. [2019 (6) TMI 1327 - CESTAT MUMBAI]
 - Adani Energy Ltd [2022 (3) TMI 696 - CESTAT AHMEDABAD]
 - Panacea Biotec Ltd. [2019 (1) TMI 1245 - CESTAT NEW DELHI]
- As per the Department appeal, value of exempt service on account of trading in securities must be the sale value of the securities during the period prior to 01.04.2011 and the margin scheme introduced vide Explanation to Rule 6(3D) will only apply for the period post 01.04.2011.
- In M/s Mercedes Benz India Pvt. Ltd [2020 (3) TMI 146 - CESTAT MUMBAI]. it was held that the entire sale value of the securities cannot be regarded as the value of exempt service. In paras. 19 and 20 it is stated that the principle incorporated vide formula introduced as per amended Rule 6 w.e.f. 01.04.2011 shall apply for the period prior to 01.04.2011 also. The OIO has however allowed the benefit of the margin scheme for the entire disputed period.
- 34 services on which credit is sought to be modified are exclusively used for provision of taxable output services of intellectual property rights and have direct nexus with the taxable output services. Accordingly, entire CENVAT Credit attributable to 34 services should be eligible. In this regard, it is submitted that the finding in para. 4.11.1 of the OIO that promotion of brand will also have an impact on the value of shares in which the Appellant deals with and accordingly, the input services pertaining to brand promotion also have nexus with the investment activity is

incorrect as the value of shares held by the Appellant is determined by stock market. The Appellant has no role to play in deciding the value of shares.

- Appellant has vide letter dated 27.01.2015 and 16.04.2015 explained nexus of various input services and pages 626-773 of the Appeal enclosing the sample copy of invoices, also submitted before the Ld. Respondent
- All the 21 input services on which Cenvat credit has been availed are used exclusively for providing the output service of brand promotion and also, exclusions introduced in Rule 2 (1) of the CCR w.e.f. 01.04.2011 are not applicable in the present case. In this regard, a detailed write up outlining one on one co-relation between input services with the output service for the relevant period along with additional sample invoices and also explaining the non-applicability of exclusions was submitted to adjudicating authority
- In the present case, it is submitted that the SCN is issued by invoking extended period in respect of 2008-09 to 2011-12. In this regard, it is submitted that it is settled law that extended period is not invokable in respect of non-reversal of Cenvat credit on account of trading for the period prior to 01.04.2011 as it is an interpretational issue. In this regard, reliance is placed inter alia on the following decisions:
 - M/s Mercedes Benz India Pvt. Ltd (supra)
 - The Assistant Commissioner of GST & Central Excise v. Shriram Value Services Pvt. Ltd., 2019 (8) TMI 1174 - MADRAS HIGH COURT;
 - The Commissioner of Central Tax, Bangalore North Commissionerate v. M/s ABB Limited, 2022 (6) TMI 1212 - KARNATAKA HIGH COURT.
 - Ghatge Patil Industries Ltd v. C.C.G. St., Kolhapur, 2020 (10) TMI 437 - CESTAT MUMBAI;
- The extended period is not invokable even in respect of period post 01.04.2011 as the Appellant has submitted all the details to the Department and cooperated with the

investigation and hence, there is no question of suppression of facts or fraud involved in the present case. In this regard, detailed submissions are made at ground IX of the Appeal. Further, reliance is placed inter alia on the decision in Trent Hypermarket Ltd. v. Commissioner Of Central Excise, Pune-III, 2019 (6) TMI 1327 - CESTAT MUMBAI where it was held that extended period is not invokable in respect of the present issue in question even for the period post 01.04.2011

- There are computational errors in the order. The Cenvat credit availed by the Appellant has been considered higher by Rs. 1,77,99,483/-. the percentage of credit attributable to taxable services arrived at by the OIO in para. 4.9 was applied in reverse order in para 4.10 to arrive at the proportionate credit allowed on 34.
- Audit observations were issued to the Appellant vide letter ST/HQ/EA-2000/Gr.03/Tata Sons/12-13/3824 dated October 29, 2013, stating that CENVAT Credit amounting to Rs. 9,93,774/- is to be reversed. Pursuant to the EA-audit, the Appellant had reversed the said Cenvat credit. However, the same was not considered in the OIO computation.
- Miscellaneous receipts (details given in Exhibit 10 of Appeal) are not in nature of exempt services. Only renting of residential accommodation is exempt service and due reversal of the same has been made under Rule 6(3A) of Credit Rules.
- Renting of residential accommodation is an exempt service provided by the Appellant and due reversal of the same has been made under Rule 6(3A) of Credit Rules by the Appellant However, Cenvat credit already reversed under Rule 6(3A) amounting to Rs. 77,27,652 on account of renting of residential accommodation was not considered in the OIO computation.
- Benefit under Rule 6(5) of the CCR was not given for all the services falling within the ambit of the said Rule vide the OIO. The credit pertaining to interior decorator's service, insurance auxiliary service, architect Service, consulting fee and real estate agent's service amounting to

Rs. 32,27,292 should also be allowed by virtue of Rule 6(5) of the CCR.

- Interest and penalty are not applicable in the present case since the Cenvat credit availed by the Appellant is in order.

3.3 Arguing for the revenue learned authorized representative while reiterating the findings recorded in impugned order submits:

- The appellant, is registered as a "Core investment UME Company" under RBI Act and is a holding Company of their Group Companies. As per Profit & Loss A/c, for example for the Financial Year 2008-09 the Income heads are shown as under:

(i) Dividend	Rs. 175,534 lakhs
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(ii) Income from service	Rs. 29120 lakhs
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(iii) Other Income	
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Profit on sale of investment (net)

(a) Long term	Rs. 206485 lakhs
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Miscellaneous Receipt	Rs. 797 lakhs
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(b) Income from Investment in

immovable property (Rent)	Rs. 462 lakhs
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- During the years 2008-09 the appellants have booked expenditure Rs.290 cr. whereas the income from the Brands promotion is Rs. 291cr. The claim of the appellant that entire expenditure incurred for promotion of brand only is incorrect. The expenditure of Rs. 290 Cr. have been incurred on earning of entire income which also includes income from sale of investments/securities.
- The appellant have taken the input service credit of Rs.66.96 cr during the period 2008-2009 to 2012-2013. Allegation of the Department is that the appellant have taken the credit of input services used also for exempted services/non taxable activities, therefore the entire credit

is not admissible. Adjudicating Authority have clearly found (para 4.7.6 of OIO) that 21 input services are used exclusively for the core activity such as generating revenue from sale of investment and assets. Such input services are management consultancy, manpower supply, business support, etc. are primarily used for its core business and certain services i.e construction related service are excluded from the definition u/r 2(1) of CCR. The total credits on this count denied are Rs. 2.05 cr.

- Commissioner has held (at para 4.4 of OIO) that the period of demand from 1/4/2008 to 30.08.2008 is time barred which involved input service credit of Rs.6.14 Cr. The Appellant in their submissions dated 12.5.2015 have stated that credit involved during the period April 2008 to Sep. 2008 was only Rs.3.58 cr, thus, excess credit of Rs. 2.56 Cr. was erroneously allowed by adjudicating authority.
- During the hearing it was brought to the notice of the Bench that Annexure to the Show cause notice have tabulating wrongful credit of Rs 66.96 cr. The appellants have taken credit on 59 items which are used for earning income for the Core activity as well as Brand promotion activities. Out of 59 items there are 21 items involving input service credit of Rs.2.05 cr which was categorically disallowed by the Adjudication Authority, being exclusively used for exempted service.
- Adjudication Order held trading of investments, miscellaneous receipts, income from long term immovable property, guarantee commission (exports), interest income are exempted services/ non taxable activity and worked out reversal of proportionate common credit of Rs 34.37 cr.
- The Departmental Appeal is that Rule 6 (3D)(d) came in effect from 1.4.2011 , however, the Adjudication Authority for computation of reversal of credit has given the effect from 2008-2009 to 2010-2011. As per Mercedes Benz India Pvt Ltd. V/s CCE Pune 2014(36) STR 704 (T), Commissioner ought to have sought the reversal of common input service credit in ratio of value of total

turnover and turnover of exempted / non service activity prior to 1.4.2011. The activity of trading of securities to be reckoned as neither manufacturer nor service for the purpose of CENVAT Credit Rules 2004 and consequential pro-rata credit should have been denied. The amended provision with effect from 1.4.2011 cannot be applied retrospectively.

- Section 65(50) and 65B(25) have defined "Goods" as under :

(a) Goods, under section 65(50), has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930.

Section 2(7) of Sale of Goods Act, stipulate, "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;'

Thus, sale of goods cover the sale of stock and share (securities).

- Securities' has been defined u/s 65(93) of the Finance Act, securities has the meaning assigned to it in clause (h) of Section 2 of Securities Contract (Regulation) Act, 1956.

Clause (h) of Section 2 of Securities Contract (Regulation) Act, 1956 (42 of 1956) defines the Securities as

(h) "securities" include

(1) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ie) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) Rights or interest in securities,"

- It was admitted by the Appellant that they are selling and buying the securities from / to their group Companies. It may be seen from the P/L statement for F.Y. 2008 09 extracted at para 3 ibid, that the Appellant have shown Net Profit of Rs. 206485 Lakhs on sale of investment. The Appellant investment portfolio contain share, debenture, units in mutual funds, etc. It was argued by AR that during the year 2008-09 and subsequent years the income generated from the sale of investments, interest, dividends constitute around 93% of total income and the appellant have use the common credit of Rs 66.96 cr for earning this income. It is erroneous on the part of the Appellant to state that input services has not been used for exempted/non taxable activity.
- The definition of exempted services under CENVAT Credit Rules, 2004 prior to 1.4.2011 is as under:

Rule 2 (e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act."

and w.e.f 1.4.2011

Rule 2 (e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and include services on which no service tax is leviable under section 66 of the Finance Act and taxable services whose part of the value is exempted on the conditions that no credit of inputs and input service, used for providing such taxable service, shall be taken"

"Explanation- For the removal of doubts, it is hereby clarified that "exempted services includes trading;

and w.e.f 1.4.2012

Rule 2 (e) "exempted service" means -

- 1) Taxable services which is exempt from the whole of the service tax leviable thereon; or
- 2) Service, on which no service tax is leviable under section 66B of the Finance Act; or
- 3) Taxable service whose part of value is exempted on the conditions that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994".

- The "exempted services" includes trading. The securities defined under Clause (h) of Section 2 of Securities Contract (Regulation) Act, 1956 are goods as defined under Section 65(50) of the Finance Act, 1994 read with Section 2(7) of Sale of Goods Act, 1930 and Section 65(25) of the Finance Act, 1994.
- The appellants have been trading securities including units of the mutual funds and therefore as per provision of Rule 2(e) of CCR 2004 and catena of Tribunal decisions trading of goods is considered as "exempted services."/ Non-service activity. Therefore it was argued before the bench that sale and purchase of securities are to be considered as trading of goods which are exempted service/ non-service activities. The Appellant ought to have reversed

the credit on pro-rata basis (upto 1.4.2011) and as per formula prescribed u/r 6(2)/6(3A) of CCR, 2004.

- Following judgments of Tribunal/ High Court were relied upon on trading of goods wherein judicial decisions have been treated as exempted service/non-service activity and order on reversal of credit either on pro-rata basis or u/r/ 6(3) / 6(3A) of CCR, 2004.
 - Mercedes Benz India Pvt Ltd. [2014 (36) STR 704 (Tri. Mum)]
 - Synise Technologies Ltd. [2015 (36) STR 903 (Tri. Mum)]
 - Mercedes Benz India Pvt Ltd. [2016 (41)STR 577 (Bom.)]
 - Delcam Software India Pvt Ltd [2016(43) STR 103 (Tri. Mum)]
 - AVL India pvt Ltd. - 2017 (4) GSTL 59 (Tri.Del.)
 - CESTAT Excise, Common Appeal – Final Order No. A/85162-85165/2020 dt. 31.01.2020
- Credit of input service can be taken for providing output service either taxable or exempted and taxable both. The CCR, 2004 do not provide for taking credit on non-service activity. If input service on which credit have been taken for the taxable service as well as non-service activity, then assessee is bound to reverse the credit on the portion of non service activity on pro-rata basis.
- Subsequently, demand amounting to Rs. 36,42,20,169 was confirmed vide the old based on the following grounds:
 - Credit amounting to Rs 2,05,14,207/- in respect of 21 services was disallowed fully on the ground that they did not qualify as 'input service' under Rule 2(1) of the CCR having no nexus with the output service provided by the Appellant or specifically barred under the exclusionary clause of Rule 2(1). (para. 4.7 of the OIO)
 - Appellant is engaged in trading of securities of the group Companies and the same constitute 'exempt

service' thereby warranting reversal of credit under Rule 6(3A) of the CCR. Credit amounting to Rs. 34,37,05,962/- in respect of 34 services regarded as common input services was proportionately disallowed on this ground. Method as per Explanation ! (d) to Rule 6(3D) of the CCR (introduced w.e.f. 01.07.2012) was applied for determining the value of exempt service pertaining to trading in securities for the entire period of dispute, i.e., difference in purchase price and sale price or 1% of purchase price, whichever is higher. (paras. 4.8 to 4.10 of the OIO)

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument and the written submissions filed by both the sides.

4.2 Appellant have submitted that following questions arise out of the impugned order which need to be determined in these appeals:

4.3 Impugned order records following findings:

"4.2. M/s. Tata Sons Limited is registered as a core Investment Company as defined under RBI Act. Their main activity is to invest in the shares, debentures etc, of the group companies. They are also legal owner Company of the brand name TATA'. Their main source of income is the investment income in the form of dividends and interest received from the money invested in the group companies. In addition they also charge the group companies for use of the brand name "TATA" and the said income is known as Brand Promotion Income. They are paying service tax on the said brand promotion income in the category of Intellectual Property Rights Services. They are availing Cenvat credit on various input services claiming that these are used for providing their output service of Brand Promotion Service. The department has issued a show cause notice proposing to deny CENVAT credit availed by them on the ground that input services are not being used for providing taxable output service. In other words, the input services has no direct or indirect connection

with the brand promotion activity on which they are paying service tax, therefore, availment of CENVAT credit is irregular. On this point, the Noticee has argued that they are not claiming CENVAT credit on services which are exclusively used for investment activity. In other words, they are taking CENVAT credit on the 'input services' which are used for brand promotion activity only. On going through the description of input services, which is available in the Annexure to the show cause notice, I find that there may be some substance in the argument of the Noticee, because on the face of it some of the services appear to have been used in providing brand promotion services. Illustration of such service could be telephone services, Chartered Accountant services, Security Agency Services etc., which could have been used for providing brand promotion services as well as other services. In other words, these services could be considered as common input services. However, I also find that only on this basis CENVAT credit cannot be allowed for the entire amount because availment of CENVAT credit is governed by different provisions of the CENVAT Credit Rules. Therefore, in order to take a judicious view, I would be examining other provisions of the CENVAT credit Rules. In fact some of these provisions are beneficial to the Noticee.

4.3. I propose to discuss the following issues:

- (i) Issue about the time bar i.e. demand being issued for a period beyond 5 years;*
- (ii) Issue about the eligibility under Rule 6(5) of the CENVAT credit Rules;*
- (iii) Issue about the eligibility of CENVAT credit per se on various input services; and*
- (iv) Nature of incomes earned by Noticee, whether it can be covered in the definition of exempted service or taxable service; and*
- (v) Reversal of credit under Rule 6(3A) of CCR for common input services.*

4.4. Time Bar Issue: - I agree that the period from 1st April, 2008 to 30th September, 2008 is time barred because the show cause notice was served on 17th April, 2014. But, however, the

Noticee, has expressed their inability to bifurcate the amount of CENVAT credit availed by them in the first half of the year for each service separately. But, they have given the figure of total CENVAT credit availed in each of the half year period. As per the figure submitted, they had availed 53.166% of the credit (Rs. 6,97,80,516/-) in the second half of the year. The same ratio is being considered to work out the amount of CENVAT credit availed by them for individual services during the first half of the year, which is considered as time bar. This detail of amount of service tax credit for individual services would be required for further discussion where on a particular service, the CENVAT credit is being denied or allowed for the full amount. The total amount of CENVAT credit for the first half of the Financial Year 2008-09 comes to Rs.6,14,68,326/-pertaining to the period April to September, 2008, which is beyond the period of five year and ordered to be dropped.

4.5. Further, I also observe that the total Cenvat Credit amount demanded in the Show cause notice is Rs. 66,96,62,836/-. However I find that the actual amount of demand amount should have been Rs.67,00,80,012/-. The difference of Rs. 4,17,176/- has occurred due to totaling mistake of the demand amount for FY-2009 10. Instead of Rs. 8,96,16,915/- it was considered as Rs. 8,91,99,739/-. However the service tax credit amounts reflected against each of the services were correctly considered. Hence for the purpose of deciding this notice, I have considered the total amount of Rs. 67,00,80,012/ - which is a correct value. The difference is of very very small amount, therefore, I am considering the higher amount of CENVAT credit in order to provide correct calculations and to work out various amounts in proper manner.

4.6. Benefit of Rule 6(5)

Rule 6(5) of CENVAT Credit Rules provided that the services specified in the said Rule were allowed CENVAT credit for full amount even though part of these services were used for provision of exempted services. This rule was omitted with effect from 1st April, 2011. I have gone through the list of input services available in the Annexure to the show cause notice and

found that five services were covered in the said Rule 6(5). Accordingly, I ordered to allow CENVAT credit on those services for full amount as these appeared to have been used partly used in the taxable output service namely brand promotion services. The details of these services and credit availed is given below:

(Amount in Rs.)

<i>Sr No</i>	<i>Description of input service</i>	<i>Clause of Section 65(105)</i>	<i>2010-11</i>	<i>2009-10</i>	<i>1.10.08 to 31.3.09</i>	<i>Total credit availed</i>
1	Security Agency	65(105)(w)	280431	129337	40712	450480
2	Bank & Financial Services	65(105)(zm)	2062215	2685253	1943688	6691156
3	Management Consultant's Services	65(105)(r)	19835269	27424506	20988146	68247921
4	Management, Maintenance & Repair	65(105)(zgg)	409903	627170	839596	1876669
5	Scientific & Technical consultancy service	65(105)(za)	0	0	2629	2629
	<i>Total Credit availed</i>		22587818	30866266	23814771	77268855

In view of the above, the assessee is entitled to the Cenvat Credit of Rs. 7,72,68,855/ in terms of Rule 6(5) of CCR, 2004 for the period upto 31.3.2011.

4.7. Services not covered in the definition of Input Services:

On going through the list of input services as part of Annexure to the show cause notice, I find that there are number of input services which cannot be considered as "Input Services" as per the definition given in the CENVAT Credit Rules. For this purpose definition of "Input Service" prior to 1st April, 2011 and subsequent there to is given below:

4.7.1. Definition of 'input services' prior to 1.4.2011 reads as:

"input service" means any service, -

- (i) *used by a provider of taxable service for providing an output service; or*
- (ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

4.7.2. Definition of 'input services' post 1.4.2011 (subsequent to amendment vide notification No. 3/2011-CE(NT) reads as -

"Input service" means any service, -

- (i) *used by a provider of Output service for providing an output service; or*
- (ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to , modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services inward transportation of inputs*

or capital goods and outward transportation upto the place of removal;

4.7.3. Thus, vide the Notification No. 3/2011-CE(NT), the scope of "input services" was restricted to keep general activities relating to business' out of the purview of said definition.

4.7.4. Further, from 1st April, 2011 certain services were also specifically excluded from the definition of "Input Services" and these services are given below:

- (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for*
 - a. construction or execution of works contract of a building or a civil structure or a part thereof;*
 - b. or laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or*
- (B) services provided by way renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or*
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods; except when used by –*
 - a. a manufacturer of a motor vehicle in respect of motor vehicle manufactured by such person; or*
 - b. an insurance company in respect of a motor vehicle insured or reinsured by such person; or*
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;*

4.7.5. It is important to note that once the legislature has given definition of input services specifying certain activities, it clearly meant that all the services were not to be considered as "Input Services". Over a period of time, Courts have taken a view that there should be some nexus between input services and output services. I find that there are services like Event Management service, Fashion Designing, Mandap Keepers, Photography, Sound Recording, Pandal and Shamiana, Club or Association Service, Credit Card Service, Club Membership Service, which do not have any direct linkage with the output service of the Noticee. Becoming a Member of the Club or Organizing function where Mandap Keeper service have used has no direct relationship with the brand promotion activity of the Noticee.

4.7.6. I also find that there are certain Construction related services which also cannot be said to have any nexus with the output services. I further find that there are certain services, as detailed above like Works Contract Service, which have been excluded from the definition of Input services but still they have taken the CENVAT credit after 1st April, 2011. At this stage, I also mentioned that from 1st April, 2011, the definition 'Input Service', was restricted by deleting the term activities relating to business. Therefore, many of the services which do not have direct relationship should also get excluded from the definition of input services. For the purpose of easy understanding, I am broadly classifying the reasons for disallowing the CENVAT credit in the following categories:

- (i) Services not having direct nexus with the provision of output services.
- (ii) Services excluded from the definition of input services with effect from 1st April, 2011.
- (iii) Construction related services.
- (iv) Restricted meaning of Input Service with effect from 1st April, 2011.

[These are being mentioned that as category reasons (i) to (iv) in the table given below]:

(Amount in Rs.)

<i>S r n o</i>	<i>Description of input service</i>	<i>2012-13</i>	<i>2011-12</i>	<i>2010-11</i>	<i>2009- 10</i>	<i>1.10.0 8 to 31.3.2 009</i>	<i>Total credit availed</i>	<i>Reason for denial of the credit</i>
1	Air Travel Agent	147012	994720	101205	225513	135951	1604401	category-(i)
2	Event Management Service	3419654	1117475	1259434	168199	407867	6372629	category-(i)
3	Fashion designing	0	0	0	0	389	389	category-(i)
4	Mandap Keepers	2348995	1916286	994555	394425	405033	6059294	category-(i)
5	Outdoor Caterer's Services (event related)	37	0	0	1107	0	1144	category-(i)
6	Photography	1410	13261	2529	7672	967	25839	category-(i)
7	Printing & stationery	0	72615	0	0	0	72615	category-(i)
8	Real Estate Agent	726205	670219	315580	213438	78952	2004394	category-(i)
9	Rail travel agent	0	0	63	0	20	83	category-(i)
10	sound recording	0	0	0	5799	0	5799	category-(i)
11	Travel Agent	0	1071052	614	29	2081	1073776	category-(i).
12	Pandal & Shamiana	0	0	0	0	249959	249959	category-(i)
13	Misc service	0	46091	0	0	75922	122013	category-(i)
14	Architects/ Repairs	59894	103436	232567	8234	35942	440073	category-(iii)
15	Authorised Service Station	568	130	243334	2999	2988	250019	category-(ii)
16	Club or Association services	289842	7725	138484	4890	176473	617414	category-(i)&(ii)

17	Construction of complex	0	0	0	0	9003	9003	category (iii)
18	Credit Card	0	845	0	0	0	845	category-(i)
19	Membership Club	945763	91179	0	5695	0	1042637	category (ii)
20	rent a cab	0	33319	175901	107862	72337	389419	category-(ii)
21	Works Contract	172462	0	0	0	0	72462	category (iii)
	Total inadmissible credit	8111842	6138353	3464266	1145862	1653884	20514207	

Based upon the above discussion, I ordered for disallowing the CENVAT credit on the below mentioned 21 services totaling to Rs.2,05,14,207/-.

4.7.7. The Noticee in his reply dated 3.2.2015 has provided exact nature of some of the input services to show how there are used for providing their output service of brand promotion. However, I find that out of the 21 services identified by me as not eligible for CENVAT credit, they had given exact nature of only two services namely, Event Management Service and Mandap Keepers. For the remaining above mentioned services, they have not given the exact nature and use which itself shows that those services do not have direct nexus or those are not eligible for other reasons as discussed above, in the table.

4.8 Exempted services and Proportionate Reversal: As discussed above, I find that there are number of input services on which they have taken Cenvat Credit, which have been used for the provision of taxable output service, namely, brand promotion service as well as for carrying out other activities like investment incomes. The assessee's core activity is to invest in the group companies and they earn different types of income from the investment made in the group companies, namely interest income, dividend income, profit on sale of investment, income from immovable property, Exchange gain etc. I need to examine as to whether any of those income has been arising out of an activity which can be considered as provision of service or not.

This would be necessary to determine whether those activities can be considered as

'exempted service or taxable service. Further, for the purpose of proportionate reversal under Rule 6(3A) of the CCR, the said determination is necessary,

Before discussing these aspects in detail, the definition of term 'exempted service as given in Rule 2(e) of the CCR, 2004, is given below:

Definition up to 30.6.2012

(e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken".

Explanation: For the removal of doubts, it is hereby clarified that "exempted services includes trading;

Definition from 01.07.2012

(e) "exempted service" means a -

- 1) taxable service which is exempt from the whole of the service tax leviable thereon; or*
- 2) service, on which no service tax is leviable under section 66B of the Finance act, or*
- 3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken,*

But shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994

I have examined the Profit & Loss account of TSL to find out the nature of various incomes earned by them. It would be necessary to determine whether any particular income is an

income on account of provision of 'service, whether taxable service or exempted service. This determination would be necessary to work out reversal of CENVAT credit if at all required because of use of common input services in the taxable or exempted service. I am discussing the major source of income as revealed from the Profit & Loss account of the Noticee. A chart of the major income is also given in para 4.9 below.

4.8.1. Dividend Income:

The TSL has invested in the shares of Tata Group of Companies and it earns dividend from this investment. The question is whether the dividend income can be considered as a service income or not. In my view, the dividend income cannot be considered as service income because it is in the nature of share of profit earned by the owners of an organization. The Shareholders are like owners and dividend is like their share of profit. On this account, dividend income cannot be considered as arising from provision of any service. Therefore, this income would not be considered while calculating the ratio under Rule 6(3A) of CCR.

4.8.2. Profit on sale of investment:

This income represents Profit or Loss incurred on sale of investment like shares, debentures or other securities by TSL. Shares and securities are treated as "goods and trading of goods has been held by the Tribunal and Courts as service. Further, the aspect of trading of goods being treated as exempted service has been clarified by amending the definition of "exempted service" by adding an Explanation in the definition in the Rule 2(e) of CCR. The said Explanation is reproduced below:

"Explanation for the removal of doubts, it is hereby clarified that "exempted service includes trading."

4.8.2.1. Since this Explanation was introduced for the purpose of removal of doubts, therefore, this Explanation would also be applicable for the period prior to 1st April, 2011. This view has also been held by the Hon'ble Supreme Court in the case of M/s. Oblum Electrical Industries V/s. CC, Bombay (1997(94)ELT 449

(SC) wherein it was held that " It is a well settled principle of statutory construction that the Explanation must be read as to harmonize with an clear up any ambiguity in the main provision". Further In the case of H & R JOHNSON (INDIA) LTD. V/S CBEC, [2002 (144) E.L.T. 506 (Kar.)] the Karnataka High Court, in Para 14 held as under

"..... One of the recognized principles of interpretation of statutes is that if there is ambiguity in an earlier legislation, a subsequent legislation may fix the proper interpretation which is to be put upon the earlier (vide : State of Bihar v. S.K. Roy (AIR 1966 SC 1995)...".

Thus, an Explanation should not be so construed as to widen the ambit of the section. Thus it is a settled position that when the Explanation is added which is not widening the scope of tax or is not in substantive in nature, the same has be read as clarificatory nature and has retrospective effect.

4.8.2.2. Next question would be the determination of the value of the services of trading of shares and securities. Even though there were no clear cut legal provision available in the law for the period prior to 1st April, 2011 but with effect from 1st April, 2011, an Explanation has been added in Rule 6 (3D)(d) of CCR, clarifying that in case of trading of Securities, the value shall be difference between purchase and sale price or 1% of the purchase price, whichever is more. Since, I am considering the Explanation inserted with effect from 1st April, 2011 as applicable for the past period, I should be reasonable enough to allow the benefit of valuation also as provided in law from 1.4.2011 for the past period. Therefore, I adopt the methodology provided under above mentioned Explanation for working out the value of exempted service for sale of Shares and Securities.

For the purpose of calculation of the value of exempted service in case of sale of share or securities, the details, namely, purchase cost of the shares and sale proceeds was called from the Noticee and vide their letter dated 21st August, 2015 they provided these details. Based upon these details, the value of

'exempted service' i.e. service value of the trading activity has been worked out which is given below:

(Amount in Rs. For col 2 to 5)

<i>FY- 2008-09</i>	<i>BOOKVALUE OF SHARE</i>	<i>PROFIT/LOSS ON SALE</i>	<i>SALE PROCEEDS</i>	<i>1% of purchase</i>	<i>Value of Exempted Service Rs. in Crs.*</i>
<i>TCS</i>	<i>24233313</i>	<i>8925756667</i>	<i>8901523354</i>	<i>242333</i>	<i>890.15</i>
<i>TATA TELE</i>	<i>3621172720</i>	<i>16508911860</i>	<i>1288773914 0</i>	<i>36211727</i>	<i>1288.77</i>
<i>INDIAN HOTELS</i>	<i>5557121600</i>	<i>5026316459</i>	<i>-530805141</i>	<i>55571216</i>	<i>5.56</i>
<i>TATA POWER</i>	<i>609938190</i>	<i>0</i>	<i>-609938190</i>	<i>6099382</i>	<i>0.61</i>
<i>TOTAL</i>	<i>9812465823</i>	<i>30460984986</i>	<i>2064851916 3</i>	<i>98124658</i>	<i>2185</i>

(Amount in Rs. For col 2 to 5)

<i>FY-2009-10</i>	<i>BOOKVALUE OF SHARE</i>	<i>SALE PROCEEDS</i>	<i>PROFIT/LOS S ON SALE</i>	<i>1% of purchase</i>	<i>Value of Exempted Service in Rs. Crs*</i>
<i>TATA TELE</i>	<i>2989199100</i>	<i>4062319470</i>	<i>1073120370</i>	<i>2989199 1</i>	<i>107.31</i>
<i>RALLIES INDIA</i>	<i>19785522</i>	<i>765637500</i>	<i>745851978</i>	<i>197855</i>	<i>74.58</i>
<i>VANTECH INVESTMENT S</i>	<i>15319027</i>	<i>16238400</i>	<i>919373</i>	<i>153190</i>	<i>0.09</i>
<i>TATA MOTORS</i>	<i>4386678360</i>	<i>6487842727</i>	<i>2101164367</i>	<i>4386678 4</i>	<i>210.12</i>
<i>WIRELESS TT</i>	<i>5919999960</i>	<i>5919999960</i>	<i>0</i>	<i>5920000 0</i>	<i>5.92</i>
<i>TOTAL</i>	<i>1333098196 0</i>	<i>17252038057 3921056088</i>	<i>133309820</i>	<i>398</i>	

(Amount in Rs. For col 2 to 5)

<i>FY-2010-11</i>	<i>BOOKVALUE OF SHARE</i>	<i>SALE PROCEEDS</i>	<i>PROFIT/LOS S ON SALE</i>	<i>1% of purchase</i>	<i>Value of Exempted Service Rs. in Crs*</i>
<i>TATA MOTORS</i>	<i>4720637195</i>	<i>9558344838</i>	<i>4837707643</i>	<i>47206372</i>	<i>483.77</i>
<i>ADVINUS THERAPEUTI CS LTD</i>	<i>62607600</i>	<i>78259500</i>	<i>15651900</i>	<i>626076 1.57</i>	
<i>TATA SKY</i>	<i>1909822478</i>	<i>3245909337</i>	<i>1336086859</i>	<i>19098225</i>	<i>133.61</i>
<i>TATA CAPITAL</i>	<i>454490781</i>	<i>572763360</i>	<i>118272579</i>	<i>4544908</i>	<i>11.83</i>
<i>TOTAL</i>	<i>7147558054</i>	<i>1345527703 5</i>	<i>6307718981</i>	<i>71475581</i>	<i>631</i>

(Amount in Rs. For col 2 to 5)

<i>FY-2011-12</i>	<i>BOOKVALUE OF SHARE</i>	<i>SALE PROCEEDS</i>	<i>PROFIT/LOS S ON SALE</i>	<i>1% of purchase</i>	<i>Value of Exempted Service Rs.in Crs*</i>
<i>TATA MOTORS</i>	<i>4393244522</i>	<i>996214576 4</i>	<i>5568901242</i>	<i>4393244 5</i>	<i>556.89</i>
<i>ADVINUS THERAPEUTICS LTD</i>	<i>95700000</i>	<i>149242645 5</i>	<i>3542645</i>	<i>957000</i>	<i>5.35</i>
<i>TATA INVESTMENT</i>	<i>19909716</i>	<i>35451820</i>	<i>15542104</i>	<i>199097</i>	<i>1.55</i>
<i>TATA GLOBAL BEVERAGES</i>	<i>662662160</i>	<i>210707090 0</i>	<i>1444408740</i>	<i>6626622</i>	<i>144.44</i>
<i>TOTAL</i>	<i>5171516398</i>	<i>122539111 29</i>	<i>7082394731</i>	<i>5171516 4</i>	<i>708</i>

(Amount in Rs. For col 2 to 5)

<i>FY-2012-13</i>	<i>BOOKVALUE OF SHARE</i>	<i>SALE PROCEEDS</i>	<i>PROFIT/LOS S ON SALE</i>	<i>1% of purchase</i>	<i>Value of Exempted Service Rs. in Crs*</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>TATA MOTORS</i>	<i>640108746</i>	<i>172916504 4</i>	<i>1089056298</i>	<i>6401087</i>	<i>108.91</i>

ADVINUS THERAPEUTICS LTD	97597200	100792649	3195449	975972	0.32
COMUTATIONAL RESEARCH LAB	1715000000	163920058 4	-75799416	1715000 0	1.71
EWART MAURITIUS	3255170	840551	-2414619	32552	0
TOTAL	2455961116	346999882 8	1014037712	2455961 1	111

**[Value of Exempted service in Col.(6) has been calculated based upon the higher of Col.(4) and col.(5)].*

On the basis of above work sheet, the values of exempted services were considered for the purpose of arriving at the allowable quantum of Cenvat credit under Rule 6(3A) of CCR, as discussed in the para 4.9 and 4.10 below.

4.8.3. Miscellaneous Receipts:

The details of these receipts have not been made available during the adjudication proceedings inspite of request made by us. Hence I am considering the income from the Misc. Receipts as income from the 'exempted services' for the purpose of quantification of the proportionate Cenvat credit attributable to the exempted services.

4.8.4. Income from long term investment in Immovable Property:

This represents profit made on sale of immovable property. Trading of immovable property is not a service. Even, amendment made in the definition of Exempted Service has clarified trading of goods as exempted service only. Therefore, this income is not being considered as a service income.

4.8.5. Exchange Gain:

This income also cannot be considered as income from service because it is on account of foreign currency value difference.

4.8.6. Guarantee Commission (Export):

This is a commission they have earned on account of giving guarantee in favour of their group of companies to lenders. This is definitely a taxable income and would be considered for calculation under Rule 6(3A) of CCR as exempted income as they are not paying service tax.

4.8.7. Profit on sale of Current Assets:

It has been clarified by Noticee that this income is actually on account of sale of land and therefore being the profit on sale of immovable property, it would not be considered as service income as discussed earlier.

4.8.8. Profit on sale of Fixed Assets:

It is explained by Noticee that this income represents profit on sale of assets like laptop, Furniture, mobile etc. This also cannot be considered as income from services because only trading of goods has been considered as service and in the present case it is sale of Mixed Assets, which is not a trading activity,

4.8.9 Interest Income

Interest income also cannot be considered as an income from 'service' because interest on loan' has been excluded from the scope of "value of taxable service" in terms of Rule (2) of the Service Tax (Determination of Value) Rule 2006. Further, under Negative list era from 1 July, 2012, the activity of extending loan on deposit has been placed under Negative list under Section 66 (D)(N)

9. On the basis of above discussion the percentage of the credit attributable to the taxable services and exempted service is quantified as under

(Amount Rs, in Crores)

Pe rio d	Divi den d Inc om e	Inco me fro m the taxa ble serv ices (Bra nd Pro moti on Sch eme) (TS)	Profit on sale of term inves tmen ts and lapse of warr antie s (ES)	Mis c Rec eip ts (ES)	Inco me from long term inves tmen ts in mov able prop ertie s (ES)	Exc han ge Gai ns (NS)	Guar antee Com missi ons (Exp orts) (TS)	Pro fit on sal e of Cu rre nt As set s (NS)	Pr ofi t on sal e of fix ed As se ts (NS)	Int ere st Inc om e (NS)	Tot al inc om e fro m tax abl e ser vic es (3 +8)	Valu e of exe mpt serv ice (4+ 5)	Tot al val ue of ser vic e inc om e (1 2+ 13)	% of tax abl e ser vic e
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
20 08 - 09	175 5.3	291. 2	2185 .0	8.0	4.6	0.0	0.0	0.0	0.0	0.0	29 1.2	219 3.0	24 84. 2	11. 7
20 09 - 10	209 6.7	290. 0	398. 0	6.0	6.0	0.0	2.0	9.1	3. 8	0.0	29 2.1	404 .0	69 6.1	42. 0
20 10 - 11	346 4.8	319. 8	631. 0	29. 0	6.4	0.2	1.3	0.0	0. 0	0.0	32 1.1	660 .0	98 1.2	32. 7
20 11 - 12	340 3.1	383. 4	708. 0	13. 0	5.7	5.4	0.0	0.0	0. 0	20 7.4	38 3.4	721 .0	11 04. 3	34. 7
20 12 - 13	466 9.8	378. 3	111. 0	11. 4	5.2	4.9	0.0	73. 1	0. 0	50 8.4	37 8.3	122 .4	50 0.7	75. 6

[NS- Not a service. TS-Taxable service ES-Exempted service]

4.10 Accordingly the quantification of the admissible credit of Cenvat on the Common services is calculated as under:

(Amount in Rs.)

S r N o	Description of input service	2012- 13	2011- 12	2010- 11	2009-10	1.10.08 to 31.3.09	Total credit availed
1	Advertising Agency Service	204053 00	82651 79	81662 05	9089680	1071461 7	56640981
2	Broadcasting	124993 8	98050 9	65935 3	1060628	278077	4228505
3	Business Auxiliary Services	839224	11257 76	87967 09	0	1131969	11893678
4	Chartered Accountant	163939 2	11813 01	86535 0	847516	529309	5062868
5	Cleaning Services	225414	26354 3	10964 0	67279	9806	675682
6	Company Secretary	24428	16691	17562	1113	329	60123
7	Consulting fees	0	10300	69286	0	0	79586
8	Courier	24474	27492	32162	22676	51068	157872
9	AC Installation	340388	845	0	0	0	341233
1 0	Information Technology Software Services	68491	0	0	0	0	68491
1 1	Internet Telephony	10730	8781	0	0	0	19511
1 2	Leased Circuits	151444 8	10631 91	83277 3	1237686	143162	4791260
1 3	Legal Consultant Service	878083 0	12706 671	65521 21	615413	0	28655035
1 4	Manpower Recruitment & Supply	127546 62	17553 334	64614 79	5378824	2243424	44391723
1 5	Market Research	580302	67589 8	72837 9	121670	159570	2265819
1 6	Online Information & data base access or retrieval	521792 3	39291 83	23972 43	2752115	1642989	15939453
1 7	Professional services	0	1551	0	0	0	1551
1 8	Public Relations Services	354558 4	38915 82	35649 17	3911700	6235660	21149443
1 9	Security service	336341	27502 2	0	0	0	611363
2 0	Share Transfer Agent's Service	852	0	0	0	0	852

2 1	Sponsorship service	105784 68	14166 996	16969 810	7526053	8912050	58153377
2 2	Telephone	388173	46301 5	29253 3	480999	301260	1925980
2 3	Video Tape Services	70860	34426 3	20117	44352	8181	487773
2 4	Bank & Financial Services	214124	29124 6	0	0	0	505370
2 5	Business Support Services	422686 40	23890 047	22338 368	1886678 7	9786127	117149969
2 6	Interior Decorator	24039	47297	55426	22701	74943	224406
2 7	Internet Café	182539	18402	89200	223910	134783	648834
2 8	Insurance Auxiliary Service	931079	84029 8	93934 9	1074153	106721	3891600
2 9	Management Consultant's Services	121645 43	53956 894				66121437
3 0	Management, Maintenance & Repair	112282 2	26901 09				3812931
3 1	Business Exhibition Services	2379	74749	40423	25959	27598	171108
3 2	Commercial Training & Coaching	378290 8	28208 87	78836 2	2598587	31827	10022571
3 3	Convention Services	123473 1	18196 42	84465 5	675960	1230371	5805359
3 4	Hiring of charter	350961 42	48028 57	34568 35	959026	558020	44872880
	Total Credit Availed	165620 168	15820 3551	85088 257	5760478 7	4431186 1	510828624
	% of credit available (as per col. 15 of the table given under para 4.9 supra),	11.7	42.0	32.7	34.7	75.6	
	Net Cenvat credit allowable under Rule 6(3A)	194149 58	66382 943	27849 652	3347769 3	1999741 7	167122662

4.10.1. In view of the above, the assessee is entitled to the Cenvat Credit of Rs. 16,71,22,662/- in terms of Rule 6(3A) of CCR, 2004 for the period from 1.10.2008 to 31.3.2013. The balance credit of Common services amounting to Rs.

34,37,05,962/- [Rs, 51,08,28,624 - Rs. 16,71,22,662] is disallowable and stands recoverable from the assessee.

4.11.1. Based upon the above discussion, the availability of CENVAT credit is summarised as below:

Description	Amount in Rs.	reference para number of the order
Cenvat Credit admissible as per Rule 6(5) of CCR, 2004	7,72,68,855/-	Para 4.6 supra
Cenvat Credit admissible as per Rule 6(3A) of CCR, 2004	16,71,22,662/-	Para 4.10 supra
Total Credit admissible to the assessee	24,43,91,517/-	

I find that the Noticee has all long taken the plea that input services on which they have taken the credit are necessary for providing their brand promotion services. I find that there is some substance in their argument, however, whether those services have been used only for providing brand promotion service or these are also helping them in earning their "Other incomes" is an important issue which I have discussed in this order. I want to mention that those services may be needed for brand promotion but at the same time those services are also necessary for earning their other income, specially income earned form trading of securities. To illustrate they have paid a substantial amount to M/s. Vaishnavi Corporate Communication Private Limited. As per their explanation that, company is a PR Company promoting TATA brand. I agree on this point, but promoting TATA brand also help in enhancing the value of shares of TATA group, which the Noticee is holding and which are being traded by them. If the brand value of TATA group enhances it will increase the value of shares of TATA group and assessee will definitely gain from the said value which is reflected in the profit made by them. The trading of share is an "Exempted Service", hence services of M/s. Vaishnavi Corporate Communication Private Limited needs to be considered as common input services used for provision of taxable and exempted service and as per rule 6(3), proportionate reversal of credit is necessary. Similarly, the expenses incurred in advertising agency are also meant for advertising TATA brand. The logic given for service provided by

'Vaishnavi' would be equally applicable for this service also. Other services like Chartered Accountant services or telephone services or security services etc., can be said to be used for providing brand promotion services as well as it will help in provision of other exempted service like service of trading shares. Same logic would be applicable for other services also. Therefore, I do not agree with the Noticee's contention that these services are exclusively used for brand promotion services. To repeat, the telephones have been used for carrying out business of TATA Sons as a whole and it cannot be said that the said service is used only for brand promotion and not for any other activity.

4.11.2. The total amount demanded in Show Cause Notice is summarized as below:

	TEXT	AMOUNT (Rs)	RELEVANT PARA OF THE ORDER
A	CORRECTED DEMAND AMOUNT OF SCN	670080012	4.5
B	LESS AMOUNT TIME BARRED	61468326	4.4
C	LESS ADMISSIBLE CREDIT AS PER RULE 6(5) OF CCR 2004	77208855	4.6
D	LESS CREDIT ADMISSIBLE UNDER R/6(3A)	167122662	4.10
E	LESS CREDIT DISALLOWED UNDER R2(I)	20614207	4.7.6
F	LESS CREDIT DISALLOWED UNDER RULE G(3A)	343705962	4.10.1
	BALANCE	0	
G	TOTAL CREDIT DISALLOWED (E+F)	364220169	
H	TOTAL CREDIT ALLOWED (C+D)	244391517	

4.12.4. As regards the imposition of interest under Section 75 of the FA, 1994, Read with Rule 14 of CCR 2004, the game is mandatorily applicable wherever the service tax is paid at a later than due date. These would be payable on the Service tax demands confirmed by me as above.”

4.4 From the impugned order it is evident that while adjudicating the matter Commissioner has dropped the demand amounting to Rs. 30,58,59,843/- on the following grounds:

- Full credit amounting to Rs. 7,72,68,855/- allowed as per Rule 6(5) of the CCR which allows full credit in respect of common input services until 31.03.2011.
- Proportionate credit amounting to Rs. 16,71,22,662/- was allowed on 34 services regarded as common input services as per Rule 6(3A) of the CCR by applying the method as per Explanation 1 (d) to Rule 6(3D) of the CCR.
- Credit amounting to Rs. 5,14,69,326/- pertaining to the period April to September 2008 was allowed on the ground of issue of SCN beyond the extended period of limitation, viz. 5 years.

4.5 Revenue has filed appeal stating that the computation of:

- time barred demand for the period April to September 2008 is incorrect,
- proportionate credit reversal in respect of 34 services is incorrect as method as per Explanation 1 (d) to Rule 6(3D) of the CCR for computing exempt service pertaining to trading in securities is not applicable for the period prior to 01.04.2011.

4.6 **Limitation.**

In the impugned order justifying the invocation of extended period of limitation for making the demand, in terms of Rule 14 (1) of the CENVAT Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994 and for imposition of penalty under Rule 15 (3) and 15 (4) Commissioner has held as follows:

"Invocation of Extended period

4.12 The Noticee has raised a point that, they have been providing lot of information to the Department from time to time and therefore suppression cannot be allowed in the present case, I have gone through the correspondence submitted by them. They have furnished Annual Reports, details of CENVAT credit attributable to exempted services, information for preparing the profile of the company, 3CD Income Tax Audit report etc. Submitting the Balance Sheet or 3CD report or reversal of credit

information does not mean that department was aware of availing of CENVAT credit of various services which are used in taxable as well as non-taxable services. If the information is given by a well reputed group like of Noticee, department cannot believe that those information would be incomplete. Simply giving copy of the Balance Sheet does not mean that all relevant information has been provided to the department. I could have accepted their view, if any inquiry specific to availment of CENVAT credit on exempted and taxable service was initiated by the department and if they have provided information with regard to use of services in the taxable and exempted service. In fact when they have submitted the information regarding use of input services in the exempted output services, department can very well accept their version that whatever services they have used in the exempted services they have declared to the department. Therefore, I find that submitting voluminous number of records does not help them because those information were of general nature and not specific to the issue which is under consideration in this case.

4.12.1. Therefore, I find that it is a case of suppression of facts with a clear intention to avail irregular CENVAT credit and therefore extended period is invokable and consequently penalty is also imposable in this case.

4.12.2 I further, find that as I am passing this order after introduction of Section 78B, therefore, penalty under the modified Section 78 would be applicable, Further as per amended Rule 15(3) of the CCR, the penalty under Section 78 would be attracted.

4.12.3. Therefore, I impose penalty equal to 100% of CENVAT credit wrongly availed and utilized which comes to Rs. 36,42,20,169/-. Penalty would be payable under Rule 15(3) of CCR period from 1.10.2008 to 31.3.2013.”

From the reading of the above paragraph, it is quite evident that the appellant had submitted the entire information in respect of the input services and their use in the exempted output services. Further it is also evident that Commissioner has failed to point

out even a single information which was relevant for determination of the issue in question. Can there be any specific reply without a specific query. When the appellant had submitted the voluminous information as has been accepted by the Commissioner in the impugned order it is for the revenue authorities to scrutinize the same and arrive at the conclusions in a time bound manner. Failure to make any inquiry specific to availment of CENVAT Credit on taxable and exempted services by the department cannot be ground for invocation of extended period of limitation by alleging charge of suppression against the appellant. For its own failure to make inquiry and investigations within the prescribed period of time, department cannot invoke extended period of limitation. In our view the demand to this extent cannot be sustained and needs to be set aside.

Computational Errors

4.7 As regards computational error as stated by the revenue in the appeal the issue do not involve any specific question of law to be agitated upon. Appellant have also pointed out certain computational errors in calculating the amounts to be confirmed. These are matter of factual verification for which we would remand the matter back to the original authority for re-computation of demand if any in accordance with the principles of law determined by us in this order.

Merits of the Case:

4.8 The demand in the present case has been made by referring to the incomes indicated by the appellant in their book of accounts. The case against the appellant is that substantial portion of the business income earned by the appellant is from trading of securities, which is exempt from payment of service tax. Even if it is held that appellants were trading in securities, then also for the benefit of *Rule 6 (3D)(d) of CCR* will have to be allowed, and impugned order cannot be faulted to that extent. The department appeal in this respect do not hold any merits. For making the observation to this effect learned Authorized Representative has marshaled is arguments based definition of Securities in the Securities Contract (Regulation) Act, 1956 and

Sale of Goods Act. The definitions under these Acts have been adopted under Finance Act, 1994. However while making the above submissions while both as per show cause notice and impugned order accept that the appellant is CIC and as per RBI Directions they are barred from trading in securities. In our view the appellants do not actually trade in securities but are only managing their investments in the group companies by withdrawing the investment made in one company and subsequently investing in other. Such management of investment by the appellant cannot be termed as trading because the appellants do not buy and sell the stocks any and every company. Also the management of investment as submitted by the appellants is on the basis of need and not with the sole motive of profit. Looking into the status of the appellant as CIC we are not inclined to agree with the submissions made by the revenue in this respect, that the appellant were trading in security.

4.9 Certain services such as that of stock brokers etc were availed by the appellant exclusively for managing their investments CENVAT credit on these services which are in respect of these activities will not be admissible. Appellants have referred to following decisions which support their case.

- Shriram Life Insurance Company Limited [2019 (2) TMI 688 - CESTAT HYDERABAD] holds as follows:

"11. In view of the above, we are of the view that the investment activity undertaken by the appellant assessee is an integral part of life insurance service and cannot be divested from the same. As the service being rendered by the appellant is that of life insurance, which is a taxable service, it cannot be said that appellant is rendering any exempted service. In our view, even otherwise Rule 6 of CENVAT Credit Rules 2004, applies in a case where credit on inputs and input services i.e. common to rendition on taxable and exempted services has been availed of, in the instant case the only service that the appellant is rendering is life insurance service, which is taxable entirely. Thus, it cannot be said that appellant has availed any credit on input and input services which is common or attributable to

rendition of any exempted services. Even otherwise, since tax was paid on the entire premium recovered towards the service of managing investment in approved securities, appellant cannot be said to be rendering any exempted services. The term "Exempted Services" has been defined in Rule 2(E) of CENVAT Credit Rules, 2004, which reads as under:

"exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act (and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Explanation - For the removal of doubts, it is hereby clarified that "exempted services" includes trading)"

12. It can be seen from the above definition that in order to be termed as "Exempted Services", the following is required:

(i) Taxable service which is exempted from whole of service tax leviable thereon or

(ii) Service, on which no service tax is leviable under section 66(B) of Finance Act; or

(iii) Taxable service whose part is exempted on the condition that no credit on input and input services used for providing such taxable services shall be taken but shall not include the service which is exported.

13. The definitive meaning attributable to the above would mean that an exempted service means no tax should have been leviable on the same and a person undertaking trading of securities on his own account does not discharge any tax qua other activity. However, under the Finance Act, 1994, insurer is not only liable to service tax of that portion of the premium which is attributable to risk in life covered by the insurer but also towards the charges attributable to investment activity; this position is acknowledged by CBEC vide circular No. 334/3/2011-TRU, dated 28.02.2011. In the case in hand, as the activity of managing investments suffers service tax liability under life insurance services, the same cannot be said to be an exempted

service, warranting reversal of CENVAT Credit under Rule 6 of CENVAT Credit Rules 2004."

- Ace Creative Learning Pvt. Ltd. [2021 (4) TMI 687 - CESTAT BANGALORE]

"5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is providing Commercial Training and Coaching Services and they have also invested in the mutual funds and have earned profit during the year 2014-15, 2015-16 & 2016-17 which they have shown as under the head "other income". The Department has wrongly considered the investment in mutual fund as trading in mutual funds and has issued a notice on the presumption that the appellant is providing exempted services which is trading in mutual funds and has not maintained separate records for common input services availed in providing the output services and exempted activity i.e. trading and hence are liable to pay 6%/7% of the amount of exempted services. Further I find that the 'trading' has not been defined under the Service Tax but in the context of securities, 'trading' means an activity where a person is engaged in selling the goods and occupy for the purpose of making profit but certainly trading is different from redemption of mutual fund units, in the present case appellant cannot transfer the mutual fund units to third party and give only by redemption to the mutual fund because the appellant is not permitted to trade mutual fund unit in the absence of a license from the SEBI. There is a restriction on the right to transfer unit and the appellant cannot transfer units to any other person. Further I find that the appellant cannot be termed as "service provider" because he only makes an investment in the mutual fund and earn profit from it which is shown in the Books of Accounts under the head "other income". Hence the question of invoking Rule 6 does not arise and I am of the view that Department has wrongly invoked the provisions of Rule 6(3) demanding the reversal of credit on the exempted services. I also find that substantial demand is time-barred as during the audit, the Department entertained the view that the appellant is engaged in providing the exempted services and consequently

issued the show-cause notice. The appellant has been filing the returns under the taxable service of 'Commercial Training and Coaching and has provided all the records to the Department during the course of investigation and has not suppressed any material fact from the Department and in view of the various decisions relied upon by the appellant, extended period cannot be invoked where the Revenue's case is based on Balance Sheet and income return and other records of the assessee. In view of my discussion above, I am of the considered view that the impugned order is not sustainable in law and the same is set aside by allowing the appeal of the appellant."

- Space Matrix Design Consultants Pvt. Ltd. [2019 (4) TMI 1599 - CESTAT BANGALORE]

"5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants are not in the business of buying and selling of Mutual Fund securities rather the appellant has made investment in Mutual Funds in financial years 2016-17 in order to utilize the surplus fund that may accrue from time to time with an intention to manage the company's liquidity and mitigating its operational and financial risk. The said investments are only redeemed when there is necessity of funds and the same is utilized for the operational need of the company. Further I find that the appellant is not engaged in the business of trading in securities (Mutual Funds) but the investment in Mutual Fund is an investment activity and gain from return of Mutual Fund is taxed as capital gain and not as business income. Further I note that the Commissioner (Appeals) in para 14 has observed that the appellant has availed and utilized credit on common input services viz. Works Contract Services, Interior Decorator and Design Services, Architect Services etc which were used both for provision of taxable services as well as exempted services viz. trading in Mutual Fund securities and had neither maintained separate accounts in terms of Rule 6(2)(b) of Cenvat Credit Rules nor complied with the provisions of Rule 6(3)(i) or 6(3)(ii) of Cenvat Credit Rules, 2004. On these premises he has upheld the demand of 6% of the value of exempted services. This

finding of the learned Commissioner (Appeals) is not tenable in law because for investment in Mutual Fund securities, appellants have not utilized any of the common input services viz. Works Contract Services, Interior Decorator and Design Services and Architect Services. Therefore, the very basis of the finding is not sustainable in law as the Department has failed to prove that these input services are also used in or in relation to the provisions of exempted services i.e. trading in securities. In the absence of such co-relation, I am of the view that Rule 6(3) is not applicable. In view of my discussion above, I am of the considered view that impugned order is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant with consequential relief, if any."

In view of the decisions as above we are inclined to hold against the applicability of Rule 6 (3) by treating the 34 services as has been held by the Commissioner as common input services for providing the exempted and taxable services of brand promotion. In our view the present case is not for determination of common input services, but revenue needs to identify those services which have been exclusively used for providing the taxable service and those which have been used for management of investments. Thus for reconsideration of the common inputs used for providing the exempted and taxable service as determined in para 4.8 of the impugned order the matter needs to be remanded back to the original authority. Authorized representative has relied upon certain decisions rendered by the tribunal in case of trading of goods wherein it has been held that proportionate reversal as per the rule 6 (3) should be applicable to the case of trading of goods during the period prior to the amendments made in 2011. We do not have any quarrel with the above proposition to the extent of trading of goods. However as we have held that investment management is not trading of services these decisions do not advance the case of revenue.

4.10 In the case of Hinduja Global Solutions Ltd [2016 (42) STR 932 (T-Ban)] following has been held:

"5.1 The issue involved in this case is whether the appellant has correctly availed Cenvat credit or otherwise in respect of the Service Tax paid on the services received by their head office in respect of the disinvestments undertaken.

5.2 Undisputed facts are that appellant is output service provider and discharging Service Tax liability; they have their head office at Mumbai and registered with the department as ISD; the Cenvat credit availed or Service Tax is discharged by the service providers. It is also undisputed that the appellant had raised the plea before the adjudicating authority that the services on which service tax is paid and Cenvat credit is availed is in respect of the expansion of the business undertaken.

5.3 On this factual matrix, we have to consider whether the availment of Cenvat credit by the appellant on the various services is correct or not. In order to appreciate the correct position of law, we have read the definition of the input service as per Rule 2(1) of the Cenvat Credit Rules, 2004 which reads as under :

2(1) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

It is seen from the records that the Cenvat credit availed by the appellant is in respect of the Service Tax paid by various service providers who had rendered the services of advise, procedural issue as to raising the finance by pledging of the shares on behalf of the appellant for borrowing from IDFC Ltd.; advisory service provided in relation to divestment of stakes in Indus Ind Telecom Network Ltd.; advisory services provided for acquisition of shares in a company; advisory services provider for disinvestment of stakes owned by the appellant and its subsidiaries in various entities and syndication fee for arranging loan of Rs. 200 crores to appellant.

5.4 It can be seen from the above reproduced services which were received by the appellant were in respect of raising of finance for the expansion of the business of the appellant. This specific plea taken by the appellant before adjudicating authority has not been controverted in the impugned order which would mean that the adjudicating authority has accepted that the appellant had embarked upon expansion of the business. It is to be recorded that for expanding any business, there is always requirement of working capital which needs to be raised by the assessee and in this case, it is undisputed that the appellant had raised such finances by investment and divestment and disinvestment of the business interest they had in various entities.

5.5 The plain reading of the definition of input services (as hereinabove reproduced) would indicate that the activities relating to business which is in the second portion of the definition includes the activity of financing which would mean that if an assessee pays Service Tax for the various services received by them for raising the finance, Cenvat credit can be availed. In our considered view, the Cenvat credit availed by the appellant or Service Tax paid cannot be disputed. In yet another angle, it has to be noted that the Cenvat credit which is availed by the appellant is in respect of the distribution of the Service Tax by their head office as input service distributor. We find nothing on record to indicate that head office of the appellant was issued a show cause notice denying them such Cenvat

credit. In the absence of any doubt raised as to the eligibility to avail the Cenvat credit at their head office, the recipient unit, cannot be asked to explain the nexus of such credit to the output service provided by them. In our considered view, and is undisputed that the amounts so raised by the appellant by disinvestment, investment, etc., were recorded in their financial account towards the expansion of the business activity undertaken by the appellant.

5.6 In our considered opinion, the expansion of the business activity is directly connected with the activity of the service provided by the appellant to their service recipient which is nothing but the correlation to the business undertaken by the appellant. We find that our above view that the services which are rendered for the business activities as per the definition of the input service under Rule 2(1) of CCR, 2004 has been fortified by the judgment of the Hon'ble High Court of Bombay in the case of Deepak Fertilizers and Petrochemicals Corpn. Ltd. v. CCE - 2013 (32) S.T.R. 532 (Bom.) and Commissioner v. Ultratech Cement Ltd. - 2010 (260) E.L.T. 369 (Bom.) = 2010 (20) S.T.R. 577 (Bom.). Relevant paragraphs, containing the ratio are reproduced :

In the case of Deepak Fertilizers (supra) :

"5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding

that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(1) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(1) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(1). The first part of Rule 2(1) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(1) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(1). Rule 2(1) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(1). Moreover, as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and

comprehensive meaning of the expression 'input service' in Rule 2(1). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process".

In the case of Ultratech Cement :

"27. The definition of "input service" as per Rule 2(1) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products up to the place of removal. The third category, includes services namely;

(a) Services used in relation to setting up, modernization, renovation or repairs of a factory,

(b) Services used in an office relating to such factory,

(c) Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition.

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29. The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the

activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2(1) of the 2004 Rules.

30 to 33

34. Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product.”

It can be seen that in the above case of manufacturers the Hon’ble High Court has considered the definition of ‘input services’, a ratio which will be applicable in the case of output service providers also, as it cannot be disputed that the output service providers also need input services for financing of the business activity.”

4.11 Undisputedly appellants are engaged in providing the brand promotion service by promoting the brand name of TATA. They have availed CENVAT credit in respect of various services used in their activities of brand Promotion. Commissioner has in respect of 21 services concluded that these services were not used for providing the taxable services. However in the impugned order he classifies the reasons for disallowance in four categories and disallow the CENVAT Credit. Such approach is totally devoid of any merits. Commissioner needs to examine the submissions made by the appellant with regards to the nexus of the said input services, directly on indirectly in providing the taxable services. Appellants have specifically urged before us that they had made a detailed submissions to the adjudicating authority in respect of these and commissioner has failed record his findings in respect of the those submission. In our view the matter in respect of these 21 services need to be reconsidered by the Commissioner. Thus for reconsideration of the para 4.7 of the impugned order the matter needs to be remanded back to the commissioner.

4.12 Since we have held that extent period of limitation is not available to the revenue as the ingredient as required for invoking the extended period are not available in the present case, we hold against penalties imposed on the appellant under Rule 15 (3) or 15 (4) of Cenvat Credit Rules, 2004 as applicable during the relevant period read with Section 78 of the Finance Act, 1994 cannot be sustained, in view of Hon'ble Apex Court decision in the case of Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3 (SC)]

4.12 Since we are of the view the matter needs to be remanded back to original authority for taking into account our observations made in para 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11 the liability to interest will come only on the redetermined amount.

5.1 The appeals are allowed setting aside the impugned order and matter remanded to the original authority for reconsideration of the issues in light of the observations made in para 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11 above.

5.2 Since the matter is quite old adjudicating authority should in remand proceedings decide the matter within three months from the date of receipt of this order.

(Order pronounced in the open court on 01.11.2022)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)